

Working of Consumer Act in India: A Legal Analysis

Abstract

The importance of the Consumer Protection Act, which came into force with effect from 1st day of July, 1987, lies in promoting welfare of the society by enabling the consumers to participate directly in the market economy. As per the preamble, the Act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. The Act seeks, inter-alia, to promote and protect the rights of the consumers, and provides for the establishment of the Central and State Consumer Protection Councils and the establishment of three-tier consumer disputes redressal agencies consisting of the District Forum, the State Commission and the National Commission.

Keywords: Consumer Protection, Consumer Forum, Interest of Consumers, Consumer Rights

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Introduction

The dominating position of the public and private enterprises providing services like banking, financing, insurance, transport, processing, board and lodging, entertainment, amusement, electricity and water; and the blind race for earning money by fair or foul means by some of the well-organized producers and businessmen lacking trust and honesty against the illiterate, ignorant, unorganized consumers led to consumer exploitation in India. Not only illiterate but educated consumers knew well that they were being exploited, yet they were tolerating it because of expensive and time-consuming procedural delays in instituting cases for damages in the civil courts. The Indian Parliament, recognizing the need of the hour, enacted the Consumer Protection Act, 1986, which is a landmark in the history of socio-economic legislation, and can be termed as 'magna carta' in the field of consumer protection for checking the unfair trade practices and deficiency in relation to goods and services.

The Preamble of the Act is "An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith."

The needs of the human beings in the primitive stage were few with the sole aim for existence when they lived in forests and caves and continued to lead a life governed by the law of the jungle. The flora and the fauna were the main sources of food. The plants, the catch or the killing of animals was only for the personal consumption. With the passage of time people learnt to form social groups and knowledge dawned upon their evolving consciousness to create and develop a social environment to make life more secure. Initially every family has to provide its own food and shelter and then people started different occupations-farmers started producing wheat while weavers started manufacturing cloth and the blacksmith or carpenter started making tools of agriculture and husbandry. This gave rise to the barter system whereby direct exchange or trade took place for goods produced by one person with the goods required; which some other person can spare, e.g., the weaver having surplus cloth exchanged it with the farmer who had surplus wheat and who required cloth.

However, with the increase in the volume of trade and the increase in the production many difficulties were found in the barter system. It was found that the exchange of goods and services cannot take place unless and until a person require the same thing which the other person can spare and can himself spare the same article which the other person demands. It was difficult to store the goods and services for a long period and it was also difficult to calculate the exact value of goods and

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services to be exchanged, e.g., how will an employer pay for the services of his workers. Thus, the barter system, being inconvenient, gave place to 'the commonly accepted commodity' known as money or currency to buy and sell the goods and services in the market. Money or currency can be in the shape of a metal currency or a paper currency which is generally accepted by people as a medium of exchange or payment.

The industrial revolution and the development in the international trade and commerce had led to the vast expansion of the business and trade, as a result of which variety of consumer goods have appeared in the market to cater the needs of the consumers and a host of services have been made available to the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well-organized sector of manufacturers and traders with better knowledge of markets has come into existence thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable in the second half of the twentieth century.

Due to the international character of trade and industry having well organized and highly professionalized producers and sellers on one hand and the illiterate and unorganized consumers with little time on the other - the exploitation of consumers is inevitable. The exploitation of the consumers cannot be avoided without the development of international consumer protection movement. Various international organizations like the International Labour Organisation (ILO), the World Health Organization (WHO), the Economic and Social Council of the United Nations (UNESCO), United Nations Conference on Trade and Development (UNCTAD) and United Nations International Children Emergency Fund (UNICEF) have contributed a lot for the protection of the rights of the consumers in the international sphere. In addition, the World Industrial Property Organization, International Organization of Consumers Union and the Inter-Scandinavian Committee on Consumer Matters are also busy in protecting the interests of the consumers at the international level. The Inter-governmental Working Group on the Code of Conduct of the Commission on Transnational Corporations at its fourth session in March, 1978 agreed upon the following measures relevant to the consumer protection:-

1. The transnational corporations should perform their operations in such a way that does not cause dangers to the health and safety of consumers and they should maintain consistent quality of products.
2. The transnational corporations should disclose to the appropriate authorities of the countries, in which they operate, the information relating to features of their products which are directly related with the 'health and safety of the consumers.
3. The transnational corporations should disclose the information relating to prohibitions, restrictions, warnings and other regulatory measures imposed in other countries, on

grounds of health and safety protection, on products which they produce or market or propose to market and on the processes which they use or propose to use in the countries concerned.

4. The transnational corporations should disclose to the public the necessary information on the contents and the possible dangers or other adverse effects of the products, they produce or market or propose to produce or market in the countries concerned, by means of proper informative and non-misleading advertising and other appropriate methods.
5. The transnational corporations should disclose: the appropriate information relating to the experimental aspects and uses of products which they propose to use or market in the countries concerned.
6. The transnational corporations should cooperate with governments of the countries in which they operate with a view to promote standards for the protection of the health and safety of the consumers in relation to their production or marketing in the countries concerned.

On the role of governments in safeguarding the interests of the consumers, the United Nations Economic and Social Council (as per report of the Secretary General on Consumer Protection dated 27th May, 1983) has made the following recommendations:-

1. The governments should develop or strengthen and implement a coherent consumer protection policy taking into consideration the guidelines set out below. In doing so, each government must set its own priorities for the protection of consumers, in accordance with the economic and social conditions of the country, keeping in view the needs of its people, and bearing in mind the costs and benefits of the proposed legislation.
2. The legitimate needs which the guidelines are intended to secure are-
 - a. The physical safety of the consumers and their protection from potential dangers;
 - b. The protection of the economic interests of the consumers;
 - c. The access of consumers to the necessary information to make informed choices according to individual wishes and needs;
 - d. The consumer education;
 - e. The availability of effective consumers redress; and
 - f. The freedom to form consumers groups or organizations and the opportunity of such organizations to be consulted.
3. The governments should provide adequate infrastructure including the establishment of public bodies as well as financial facilities to develop, implement and monitor consumer protection policies. The special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population.

4. The introduction of new products particularly in the developing countries must be assessed in relation to local conditions and with due regard for the existing production, distribution and consumption patterns of the country or region concerned.
5. The transnational corporations should conform to national and international standards for consumer protection, including the pertinent provisions of the United Nations Instruments.

Review of Literature

H.K. Mudgil, in his article narrates the socio-economic movement and makes suggestions for the fruition of consumer movement in India, especially Haryana, where it is in a nascent stage.¹

Joaquín Sarrión Esteve (2018) in his research paper entitled "Effective Judicial Protection in Consumer Protection. - In the European Court of Justice (ECJ)" The aim of this paper is to examine the effective control that European Court of Justice exercises on national law applying the right for citizens to benefit from effective judicial protection, particularly in the matter of consumer protection.

Aneesh V. Pillai (March 2018) in his research paper entitled "Criminal Law: A Tool for Consumer Protection in India" has explained that the protection of consumer's interest is not new, but it has assumed the added significance because of the vast expansion of business and trade in this century. Exploitation of consumers in this century manifested itself in various forms such as price hikes, production and supply of substandard and hazardous goods, use of false weights and measures, adulteration, false and misleading advertisements, misbranding, blackmarketing and hoarding etc.

The Consumer Protection Bill, 2018

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. However, there are several shortcomings in the proposed bill. The 2015 Bill was introduced in Lok Sabha on August 10, 2015 sought to: (i) establish a regulatory body to enforce consumer rights, (ii) establish redressal agencies to adjudicate consumer disputes, (iii) enable consumers to file claims for product liability, and (iv) define unfair contracts and allow consumers to file complaints against them. It was later sent to the Standing Committee on Food, Consumer Affairs and Public Distribution (Chair: Mr J. C. Divakar) and the committee submitted its report on the Consumer Protection Bill, 2015 on April 26, 2016. The Bill provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Disputes Redressal Agencies, inter alia, relating to enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies; increasing minimum number of Members in the State Consumer Disputes Redressal Commissions and provisions for consumers to file complaints electronically, etc.

Objectives of the Study

The main objective of the study was to examine the extent of awareness and implementation of Law among consumers of their consumer rights. The other objectives are as follows.

1. To understand the mechanism of consumer law in India.
2. To study the provisions of consumers Law about Consumer rights Protection.
3. To examine their rules and regulations adopted by Consumer forum's.

Constitution of India and consumer Right

In India, after attaining independence, we adopted the Socialistic pattern of society, as is evident from the Preamble to the Constitution of India, which reads as under:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The Constitution of India confers the Fundamental Rights on each and every person under Articles 14, 20, 21, 22 and 25; on each and every citizen of India under Articles 15, 16 and 19; and on each and every community under Articles 17, 26 and 30. These Fundamental Rights are enforceable and justifiable legal rights. On the other hand the Directive Principles of State Policy enshrined in Part IV of the Constitution of India are fundamental in the governance of the country as laid down in Article 37 of the Constitution, which is reproduced below:

"The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

The Fundamental Rights can be regarded as legal ends to be achieved by the State while the Directive Principles of State Policy can be said to be moral ends to be achieved by the Government. The Directive Principles of State Policy are not enforceable in the courts of law because their fulfillment depends upon the resources available at the disposal of the government. However, these Directive Principles can be described as sacred and inalienable as they represent the policies and the programmes which the State should achieve. As the Fundamental Rights impose a duty on the State not to violate them, the Directive Principles of State Policy impose a corresponding duty on the State to apply them in making the laws for the welfare of the people. The objectives given both in the Fundamental Rights and in the Directive Principles of State Policy are

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equally important and go together and represent the kind of the society which we wish to create in India. One of the Directive Principles of State Policy enshrined in Article 47 of the Constitution of India lays down as under:

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.”

“Social welfare” means the well-being of the society. When a person consumes goods and services, he gets satisfaction or welfare from the same though the welfare concept differs from man to man. A north Indian may get more satisfaction or welfare from consumption of tea than coffee while a south Indian may get more utility or welfare from the consumption of coffee than tea. Money enables people to buy goods and services for their enjoyment and, therefore, it is correct to say that money or wealth is the means while the welfare or the utility is the end. However, there may be goods and services which are deficient or which may be injurious to the public health and may not yield utility or welfare to the consumers. And to protect the consumers from the exploitation of traders and from adulterated and sub-standard articles and for the better protection of the interests of consumers, the Consumer Protection Act, 1986 has been enacted, which seeks, inter alia, to promote and protect the rights of the consumers, such as-

1. The right to be protected against the marketing of goods and services which 'are hazardous to life and property;
2. The right to be informed about the quality, quantity, potency, purity, .Standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
3. The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
4. The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate Fora;
5. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
6. The right to consumer education.

However certain shortcomings were found with the implementation of the Act and to tackle the same, the Consumer Protection (Amendment) Act, 1991 (Act No. 34 of 1991) was enacted in view of the decision of the National Consumer Disputes Redressal Commission regarding passing of order under sub-section (2) of section 14 of the Act which provided inter-alia:-

1. for the amendment of sub-section (2) of section 14 to provide that every proceeding of the District Forum shall be conducted by the President and at least one member thereof sitting together;

2. that every order made by the District Forum shall be signed by its President and member or members who conducted the proceeding;
3. that where the proceeding is conducted by the President and a member of the District Forum and they differ on any point or points, the same shall be referred to the other member on such point or points and the opinion of the majority shall be the order of the District Forum;
4. to validate the orders which have been signed by the President and one member of the District Forum or the State Commission before amendment; and
5. that in case of vacancy in the office of the President, the person who is qualified to be appointed as President of the District Forum or the State Commission may be temporarily appointed to held such office.

However due to the expectations of the consumers and due to the shortcomings found in the implementation of the Consumer Protection Act, the Consumer Protection (Amendment) Act, 1993 (Act No. 50 of 1993) was enacted to provide for the following:-

1. to enlarge the scope of the Consumer Protection Act so as to enable the consumers to file class action complaints where such consumers have a common interest and to file complaints relating to restrictive trade practices adopted by a trader;
2. to enable the consumers who are self-employed to file complaints before the redressal agencies where goods bought by them exclusively for earning their livelihood, suffer from any defect;
3. to add 'services' relating to housing construction within the ambit of the Act;
4. to enable filing of class action complaints on behalf of group of consumers having the same interest;
5. to provide for the constitution of selection committees for the selection of non-judicial members of various redressal agencies;
6. To increase the monetary jurisdiction of District Fora/State Commission/National Commission;
7. to confer additional powers on the redressal agencies by way of awarding costs to the parties, for ordering removal of defects or deficiency from the services, and for empowering to re-call of goods likely to endanger the safety of the public, etc.;
8. To impose punishment on the complainant in cases of frivolous or vexatious complaints; and
9. To provide for a limitation period of two years from the date the cause of action has arisen for filing complaints.

At present, the National Commission at New Delhi with 32 State Commissions and 543 District Fora are functioning in the country to deal with consumer disputes. Since its inception on June 1, 1987 upto 31st December, 1998, the number of cases instituted before the National Commission was 15,088, out of which it has disposed of 8,994 cases during this period, with figure of pending cases standing at 6,094 and, therefore, the National Commission disposed of around 60% of the cases

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instituted. Since the inception of the State Commissions, a total number of 1,36,529 cases were instituted up to 31st December, 1998, out of which 81,453 cases were disposed of, leaving the number of pending cases at 55,076, which means that about 60% of the cases have been disposed of by the State Commissions also. The Himachal Pradesh State Consumer Disputes Redressal Commission has disposed of 93% of the cases instituted since its inception upto 31st December, 1998. The reason for the increasing pendency before Consumer Disputes Redressal Agencies is inadequacy of proper infrastructure.

The Consumer Protection Act

The enactment of the Consumer Protection Act, 1986, which came into force with effect from 1st July, 1987 in whole of India, is regarded as 'magna cart-a' in the field of consumer protection for checking the unfair trade practices and deficiency in goods and services. Consumer protection is the off-shoot of the industrial revolution because the development in the field of trade and commerce generated profit motive leading to a race for earning wealth by all means - whether fair or foul. The business community is well-organized and has powerful organizations to secure their interests against the unorganized and mostly illiterate and poor consumers in India. So the worst sufferers of the industrial growth and development are the consumers in India. In early days the demands were limited and simple with adequate information about goods and services readily available in the market. However the population explosion coupled with advancement in society and the industrial revolution has increased the needs of the consumers. The availability of many goods of the same type and the publicity in the television, newspapers and magazines have made it difficult for the consumers to choose the best available in the market. It may not be wrong to point out here that most of the problems being faced in India today are the result of our failure to inculcate the nationalist and patriotic feelings in the younger generations after the independence. The glut of sub-standard, misbranded and adulterated goods in the market by a few unscrupulous traders, with the ulterior motive to make easy money, the misleading advertisements regarding goods and services and ever-increasing prices of goods led to the demand for better protection of consumers through special legislation.

The importance of the Consumer Protection Act, 1986, lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of the public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting

for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be silver lining, which may in course of time succeed in checking the rot. Thus the legislation is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.

Act, provides for the establishment of three-tier consumer disputes redressal agencies, namely:-

1. the District Forum;
2. the State Commission;
3. the National Consumer Disputes Redressal Commission.

As per the Consumer Protection Act, 1986, a complaint can be filed in writing, without any fee, by the consumer himself or by any recognised consumer association or by the Central or the State Government. The complaint should contain the allegations about the defect in the goods, the deficiency in the service and the loss suffered by the unfair trade practices etc., and the complaint can be filed either in person or through counsel or can be sent by post to the District Forum, the State Commission or the National Commission, having jurisdiction to entertain and try the same. A complaint in writing under the Act should contain the following particulars:-

1. the designation and the place of sitting of the forum or the commission to whom addressed;
2. the name, description and address of the complainant;
3. the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;
4. the facts relating to complaint and when and where arose, along with full particulars of the goods and services with defects or deficiencies complained of in the complaint;
5. the description of the documents, if any, relied upon to support the allegations contained in the complaint;
6. the list of witnesses to be examined to prove the allegations made in the complaint;
7. the relief or reliefs which the complainant claim.

The Statement of Objects and Reasons lays down that the Consumer Protection Act should provide speedy and simple redressal of consumer disputes. For speedy redressal of the consumer disputes, following time limit for deciding the complaint or the appeal is provided:-

1. the complaint shall be decided within three months from the date of service of notice on the opposite party where the complaint does not require testing or analysis of the commodity;
2. the complaint shall be decided within five months from the date of service of notice on the opposite party where the complaint requires the testing or analysis of the commodity from the laboratory;
3. the appeal shall be disposed of, as far as possible, within a period of ninety days from the first date of hearing.

Establishment of permanent, full time District Forum in each district

The purpose of the Consumer Protection Act, 1986 is to provide speedy, simple and

inexpensive redressal of consumer disputes. However, in most of the states, instead of creating permanent full time post of the President of the District Consumer Forum, the District and Sessions Judge has been given the additional powers as President of the District Consumer Forum in the respective district with honorarium for the extra work to be done under the Act. We are aware that as the District and Sessions Judge is already overburdened with session trials requiring his first preference, the proper time cannot be devoted by him to the complaints under the Act. Moreover sometimes an advocate, who is appearing in civil and criminal cases in the court of District and Sessions Judge, is sitting as a member in the Forum to hear complaints under the Consumer Protection Act, 1986, with the same District and Sessions Judge, and which may impair the independence of the judiciary because it is well known that justice is not only to be done but it must appear to have been done. Therefore, it is the need of the hour that permanent full time District Consumer Forum should be established immediately in every district of the country by placing these posts in the cadre of the Higher Judicial Service of the State.

The object of the Consumer Protection Act, 1986, as the preamble of the Act proclaims, is 'for better protection of the interests of consumers'. During the last few years preceding the enactment there was, in this country, a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal forum was, therefore, increasingly felt. Understandably, therefore, the legislation was introduced and enacted with considerable enthusiasm and fanfare as a path breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods.

The Consumer Protection Act, guarantees the rights of the consumers such as (a) the right to be protected against the marketing of goods and services which are hazardous to life and property; (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices; (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices; (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums; (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and (f) the right to consumer education.. However mere mentioning of these rights in the Act is not sufficient. The need of the hour is to educate the consumers about these rights both in urban as well as in rural areas. Consumer education should be made compulsory at school, college and university levels. Print and electronic -media should play significant role in bringing awareness amongst the public about the consumer rights.

Judicial Response

Rule of law is the soul of every civilized society. Law is a command or an order and can be better described as the language of the State. Law has the same relationship to the State as language has to the society. Law is the common way of life in a civilized society. However, with the passage of time, rule of law is being used not only to maintain order and to protect individual interests but is also used to protect the interests of the society and the public at large to fulfill the ideals of the modern welfare state. The interpretation of the law is the function of judiciary in a democracy like ours and the main concern of law and justice is protection of the rights for the wellbeing of the people a judge is not an umpire or a referee to allow the case to develop into a contest between rival parties by becoming a spectator and mere recording machine, but he must become a participant in the same by showing active interest in order to ascertain the truth In a society where a consumer is generally made victim of the unfair trade practices by the well-organized sector of the traders and businessmen and the illiterate, ignorant and financially weak consumer is to fight against the powerful lobby of businessmen, the judicial activism is necessary to protect the interests of the consumers. When the judiciary is required to decide the meaning of a word keeping in view the purpose of social welfare legislation it is termed by some persons as 'judicial activism'.

Conclusion

The consumer protection Act, 1986 is the most effective act till date in India to protect the interest of consumers. However, to make it more effective and useful an urgent need is felt to improve some old and to make some new provisions. To aware the consumer at mass level is needed mostly in rural areas and it's a big challenge. The number of dispute settlement bodies also should be increased to meet the requirement. There should be more transparent method to file complaint and proceeding of judgment. Last but not least timely relief is the key of justice. It is said that justice delayed is justice denied. Hope, in near future we will see a more effective form of Consumer Protection Act as the new government seems more conscious about it.

The consumer awareness is vital for the protection of consumers. The consumer awareness societies have been formed in Ahmedabad, Bombay, Delhi, and in some other big cities who guide the consumers whether there is any defect in the goods or deficiency in the services offered in the market. The need of the hour is that such consumer guidance societies should be established in every block, town and city of the country. The need for empowerment of consumers as a class cannot be over emphasized and is already well recognized all over the world. The advancement of technology and advent of sophisticated gadgets in the market and aggressive marketing strategies in the era of globalization have not only thrown open a wide choice for the consumer, but all the same also rendered the consumer vulnerable to a plethora of problems concomitant to such rapid changes. There is an urgent and increasing necessity to educate and motivate the

consumer to be wary of the quality of the products, and also the possible deficiencies in the services of the growing sector of public utilities. In short, the consumer should be empowered with respect to his rights as a consumer. He should be equipped to be vigilant with a discerning eye so as to be able to protect himself from any wrongful act on the part of the trader. In order to be able to position the consumer in such a state, there is every need not only to evolve legal remedies but also provide reliable and comprehensive information, which he can access without much effort and expense. Recognizing the prominence of the problem, the Government of India and State Government have initiated steps to introduce dispute redressal mechanism by way of Consumer Protection Act, but a lot more has to be done in the area of creating awareness on the part of the consumer to facilitate his seeking suitable remedy wherever there is a need.

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Footnotes

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